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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,385	03/11/2004	Ryoji Muratsubaki	01424C/LH	7292
1933	7590	07/11/2005	EXAMINER	
FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 220 5TH AVE FL 16 NEW YORK, NY 10001-7708			HOGAN, JAMES SEAN	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/799,385	<b>Applicant(s)</b> MURATSUBAKI ET AL.	
	<b>Examiner</b> James S. Hogan	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-7 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/11/2004</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3,4, 8-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. The claims fail to further limit the structure of the independent claims. The claims appear to claim what the invention does rather than what the invention is. It is unclear whether applicant is claiming an apparatus or a method in the claims.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,106,268 to Kawamura et al.
5. Regarding claim 1, Kawamura et al. ('268) discloses a liquid pressurizing device having a reciprocation pump (31) having reciprocating plungers (26 and 27), pressure measuring means (11), a pressure control means (22) and means for determining and maintaining an optimum feed rate (26 and 27). As per claim 2, note Col. 1, line 62- Col 2 line 18, which outline the basis for the Kawamura et al. ('268) device to control the actual delivery pressure.

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6. In regards to claims 3, 4, and 8-11, as outlined above, since the claims contain only functional language and the device of Kawamura et al. ('268) discloses the structure it is deemed that the device shown by Kawamura et al. ('268) is adapted to perform the functional language as described in the claims. In addition, it should be noted that Kawamura et al. ('268) discloses an "adder" (22) that adjusts the pressure rate (Col. 4, lines 35-58) positively by "adding" to the fluid pressure signal " $P_i$ " to arrive at the sum " $P_s$ ", which is larger (and thus a higher rate is derived than the optimum rate).

#### ***Allowable Subject Matter***

7. Claims 5-7 allowed.

#### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows:

U.S. Patent No. 6,068,448 to Muratsubaki et al., disclosing a pressure control structure.

U.S. Patent No. 4,921,306 to Tomlin, disclosing a mining machine

U.S. Patent No. 2,819,835 to Newhall, disclosing a pump system

U.S. Patent No. 5,281,100 to Diederich, disclosing a well pump control system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JSH  
6/23/2005



**David A. Scherbel**  
**Supervisory Patent Examiner**  
**Group 3700**